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JAN 27 2020

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 27, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-10754 Richard DeOtte, et al v. Alex Azar
USDC No. 4:18-CV-825 — c

The court has granted the motion to supplement the record in this case with Documents 101, 103, and 107, filed on the district court docket. The originating court is requested to provide us with a supplemental electronic record consisting of the documents outlined in the attached motion. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

Ms. Elizabeth N. Dewar
Mr. Charles William Fillmore
Mr. Hartson Dustin Fillmore III
Ms. Jessica Fuhrman
Ms. Crystal Johnson Geise
Ms. Susan Pearl Greenberg
Ms. Claudia Hammerman
Mr. Richard Brian Katskee
Ms. Jamie A. Levitt
Ms. Melina Maria Meneguini Layerenza
Mr. Jonathan F. Mitchell
Ms. Karen S. Mitchell
Mr. Craig A. Newby
Mr. Bruce H. Schneider
Ms. Priscilla Joyce Smith
Mrs. Heidi Parry Stern
Ms. Catherine Weiss

Case No. 19-10754

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

RICHARD W. DEOTTE, on behalf of himself and others similarly situated;
YVETTE DEOTTE; JOHN KELLEY; ALISON KELLEY; HOTZE HEALTH &
WELLNESS CENTER; BRAIDWOOD MANAGEMENT, INCORPORATED, on
behalf of itself and others similarly situated,

Plaintiffs – Appellees,

v.

STATE OF NEVADA,

Movant – Appellant.

On Appeal from the United States District Court
for the Northern District of Texas
Case No. 4:18-CV-825-O

**APPELLANT STATE OF NEVADA’S MOTION TO
SUPPLEMENT THE RECORD
(UNOPPOSED)**

HEIDI PARRY STERN
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
702-486-3594
hstern@ag.nv.gov
Counsel for Movant-Appellant, State of Nevada

APPELLANT STATE OF NEVADA'S UNOPPOSED MOTION TO SUPPLEMENT THE RECORD

Pursuant to Federal Rule of Appellate Procedure 27(a)(1), Fifth Circuit Rule 27.1.11, and Fifth Circuit Rule 27.4, Movant-Appellant State of Nevada seeks to supplement the record on appeal to include three relevant documents filed in the district court after the electronic record on appeal was filed with this Court.

Specifically, Appellant would like to include:

- Document 101, which was Nevada's August 27, 2019 Amended Notice of Appeal, timely filed after the district court issued its order denying Nevada's motion to intervene and the district court issued final judgment;
- Document 103, which was the federal government's September 27, 2019 Notice of Appeal, filed on September 27, 2019; and
- Document 107, which was the district court's October 15, 2019 Notice, in which it found that Nevada should not be denied intervention on standing grounds, notwithstanding its prior analysis when issuing the order denying intervention.

These documents are attached hereto.

As set forth in Nevada's opening brief, the three subsequent documents from the district court record are relevant to issues raised in this appeal, including Appellee's motion to dismiss premised on standing and the level of adversity

provided by the federal government in this case. Appellee's counsel does not oppose this motion to supplement the record with these three court filings.

Under these circumstances, good cause exists for granting this unopposed motion.

CONCLUSION

The State of Nevada requests that the Court grant this unopposed motion to supplement the record.

Dated: January 24, 2020,

SUBMITTED BY:

s/Heidi Parry Stern
HEIDI PARRY STERN
Office of the Nevada Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
702-486-3594
hstern@ag.nv.gov
*Counsel for Movant-Appellant, State of
Nevada*

CERTIFICATE OF CONFERENCE

Pursuant to Fifth Circuit Rule 27.4, I certify that Craig A. Newby, counsel for Nevada, conferred with Jonathan F. Mitchell, counsel for Plaintiffs-Appellees, who informed him that Plaintiffs-Appellees are unopposed to this motion.

Dated: January 24, 2020

/s/ Heidi Parry Stern
HEIDI PARRY STERN
Office of the Nevada Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
702-486-3594
hstern@ag.nv.gov
*Counsel for Movant-Appellant, State of
Nevada*

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF System on January 24, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: January 24, 2020.

s/Heidi Parry Stern
An employee of the Office of the Nevada
Attorney General

CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of FED. R. APP. P. 32(a)(7)(B) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f), this document contains 236 words.

2. This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman, 14 point font.

Dated: January 24, 2020.

s/Heidi Parry Stern
HEIDI PARRY STERN
Office of the Nevada Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101
702-486-3594, hstern@ag.nv.gov
Counsel for the State of Nevada

SUPPLEMENTAL DOCUMENTS INDEX

1	08/27/19	Amended Notice of Appeal , U.S. District Court, Case No. 4:18-CV-825-O [ECF No. 101]	001
2	09/27/19	Notice of Appeal , filed by the Federal Defendants, U.S. District Court, Case No. 4:18-CV-825-O [ECF No. 103]	007
3	10/15/19	Notice , amending the Court's July 29, 2019 Order denying the State of Nevada's Motion to Intervene re: Standing, U.S. District Court, Case No. 4:18-CV-825-O [ECF No. 107]	009

EXHIBIT 1

EXHIBIT 1

ORIGINAL

No. 19-10754

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED AUG 27 2019 CLERK, U.S. DISTRICT COURT By <u>TZ</u> Deputy

RICHARD W. DEOTTE, on behalf of themselves and others similarly situated;
YVETTE DEOTTE, on behalf of themselves and others similarly situated; JOHN
KELLEY, on behalf of themselves and others similarly situated; ALISON
KELLEY, on behalf of themselves and others similarly situated; HOTZE
HEALTH & WELLNESS CENTER, on behalf of themselves and others similarly
situated; BRAIDWOOD MANAGEMENT, INCORPORATED,

Plaintiffs - Appellees

v.

STATE OF NEVADA,

Appellant.

On Appeal from
United States District Court for the Northern District of Texas
4:18-CV-825-O

**AMENDED NOTICE OF APPEAL
APPELLANT State of Nevada**

AARON D. FORD
Attorney General
/s/ Heidi Parry Stern
HEIDI PARRY STERN
Solicitor General
555 E. Washington Avenue
Las Vegas, NV 89101-0000

PLEASE TAKE NOTICE that Proposed Intervenor State of Nevada hereby appeals to the United States Court of Appeals for the Fifth Circuit from this Court's July 29, 2019 Judgment, ECF No. 98; the Court's March 30, 2019 Order, ECF No. 33, granting Plaintiffs' motion for class certification; the Court's April 1, 2019 Order, ECF No. 37, amending class certification; the Court's June 6, 2019 Order, ECF No. 76, granting Plaintiffs' motions for summary judgment and for permanent injunction; and this Court's July 29, 2019 Order, ECF No. 97, denying State of Nevada's motion to intervene. Nevada previously filed a notice of protective appeal on July 3, 2019 to preserve its right to appeal pending resolution of the then-pending motion for intervention and the issuance of final judgment.

RESPECTFULLY SUBMITTED this 27th day of August, 2019.

AARON D. FORD
Attorney General

By: /s/ Heidi Parry Stern
HEIDI PARRY STERN
(NV Bar 8873) (*pro hac vice pending*)
Solicitor General
CRAIG A. NEWBY
(NV Bar 8591) (*pro hac vice pending*)
Deputy Solicitor General
Nevada Attorney General
555 E. Washington Avenue
Las Vegas, Nevada 89101
(702) 486-3594 Telephone
HStern@ag.nv.gov
CNewby@ag.nv.gov

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the clerk of court for the United States District Court for the Northern District of Texas, by using the CM/ECF system on the 27th day of August, 2019.

I further certify that that I have served counsel of record for all parties through this Court's CM/ECF system.

Appellees:	Counsel for Appellees:
Braidwood Management, Incorporated	Hartson Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Braidwood Management, Incorporated	Charles Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Braidwood Management, Incorporated	Jonathan Mitchell Austin, TX
Richard DeOtte	Hartson Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Yvette DeOtte	Hartson Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Richard DeOtte	Charles Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Yvette DeOtte	Charles Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Richard DeOtte	Jonathan Mitchell Austin, TX
Yvette DeOtte	Jonathan Mitchell Austin, TX
Hotze Health & Wellness Center	Charles Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Hotze Health & Wellness Center	Jonathan Mitchell Austin, TX
Allison Kelley	Hartson Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
John Kelley	Hartson Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Allison Kelley	Charles Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX

John Kelley	Charles Fillmore of Fillmore Law Firm, L.L.P. Fort Worth, TX
Alison Kelley	Jonathan Mitchell Austin, TX
John Kelley	Jonathan Mitchell Austin, TX

By: /s/ Sandra Geyer
SANDRA GEYER
Office of the Attorney General

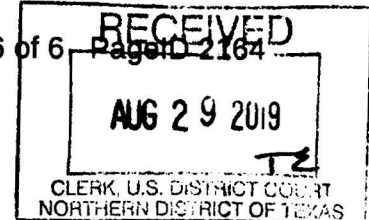
CERTIFICATE OF COMPLIANCE

1. This document complies with the FED. R. APP. P. 32(a)(7)(B) because, it is double spaced excluding the parts of the document exempted by FED. R. APP. P. 32(f) and this document contains 649 words.
2. This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because:
this document has been prepared in a proportionally spaced typeface using Microsoft Office, Word 2016 in Times New Roman pt 14.

AARON D. FORD
Attorney General

By: /s/ Heidi Parry Stern
HEIDI PARRY STERN
(NV Bar 8873) (*pro hac vice pending*)
Solicitor General
CRAIG A. NEWBY
(NV Bar 8591) (*pro hac vice pending*)
Deputy Solicitor General
Nevada Attorney General
555 E. Washington Avenue
Las Vegas, Nevada 89101
(702) 486-3594 Telephone
HStern@ag.nv.gov
CNewby@ag.nv.gov

ORIGINAL



United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 29, 2019

Ms. Karen S. Mitchell
Northern District of Texas, Fort Worth
United States District Court
501 W. 10th Street
Room 310
Fort Worth, TX 76102

Richard DeOtte, et al v. Alex Azar
USDC No. 4:18-CV-825 - O

Dear Ms. Mitchell,

I am forwarding an amended notice of appeal erroneously sent to us. We have noted the date received here (August 27, 2019). When you file the amended notice of appeal, please use that date, see FED. R. APP. P. 4(d).

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Mary Frances Yeager".

By:
Mary Frances Yeager, Deputy Clerk
504-310-7686

cc: Mrs. Heidi Parry Stern

0006

EXHIBIT 2

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RICHARD W. DEOTTE *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, in his official
capacity as Secretary of Health and
Human Services *et al.*,

Defendants.

Case No. 4:18-CV-00825-Y

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants Alex M. Azar II, in his official capacity as Secretary of Health and Human Services; Steven T. Mnuchin, in his official capacity as Secretary of the Treasury; Eugene Scalia, in his official capacity as Secretary of Labor;¹ and the United States of America hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Court's Final Judgment entered on July 29, 2019 [ECF No. 98], as well as all prior orders and decisions that merge into that Judgment, including the Orders entered on March 30, 2019 and June 5, 2019 [ECF Nos. 33, 76].

Dated: September 27, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Daniel Riess
DANIEL RIESS (Texas Bar # 24037359)
Trial Attorney
U.S. Department of Justice

¹ Pursuant to Federal Rule of Civil Procedure 25(d)(1), Eugene Scalia is automatically substituted for his predecessor, Patrick Pizzella, Acting Secretary of Labor.

Civil Division
1100 L Street, NW
Washington, D.C. 20005
Telephone: (202) 353-3098
Fax: (202) 616-8460
Email: Daniel.Riess@usdoj.gov
Attorneys for Defendants

CERTIFICATE OF SERVICE

On September 27, 2019, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) or the local rules.

/s/ Daniel Riess

EXHIBIT 3

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RICHARD W. DEOTTE et al.,

Plaintiffs,

v.

ALEX M. AZAR II et al.,

Defendants.

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Civil Action No. 4:18-cv-00825-O

NOTICE

On July 29, 2019, the Court denied the State of Nevada’s Motion to Intervene. One reason for denying Nevada’s Motion to Intervene was the Court’s conclusion that Nevada did not have standing as required by the Supreme Court’s recent opinion in *Town of Chester v. Laroe County Estates, Inc.*, 137 S. Ct. 1645 (2017). ECF No. 97. After further briefing and oral arguments in *Franciscan Alliance, Inc. v. Azar*, No. 7:16-cv-108 [hereinafter *Franciscan*]*—*neither of which occurred prior to the Court’s July 29, 2019 order in this case—the Court has determined that defendant-intervenors typically need not establish standing because they generally do not “pursue relief” within the meaning of *Town of Chester*. 137 S. Ct. at 1651; *see also Franciscan*, No. 7:16-cv-108, at 12–13 n.3 (N.D. Tex. Oct. 15, 2019), ECF No. 175.

Like the defendant-intervenors in *Franciscan*, Nevada did not claim a right to assert counterclaims, cross-claims, or any other claim for relief. *See generally* Mot. Int., ECF No. 62. Rather, they emphasized that “[n]o current party represents Nevada’s interests in defense of current law” and listed defensive actions the federal government did not take *Id.* at 8. Accordingly, the Court has reconsidered its decision and concluded that, at the trial stage, *Town of Chester*’s concept

of “relief” does not bar Nevada from intervening in this case. 137 S. Ct. at 1651. Nevertheless, for the other reasons stated in the Court’s order, Nevada is not entitled to intervene.

SO ORDERED on this 15th day of October, 2019.


Reed O'Connor
UNITED STATES DISTRICT JUDGE